Mr. A. B. Salem *(Mattancheri):* I second the amendment which was tabled by the Hon'ble Member for Revenue. It was never opposed and it was accepted by the House I do not think it is open to any member to come and say now that it should be something else.

Amendment put and carried

Clause 1 as amended put and carried

Title and preamble put and carried

Mr. A. Madhava Prabhu *(Diwan Peishkar):* I beg to move that the Bill may be taken up to-morrow.

Motion put and carried

LEGISLATIVE BUSINESS—NON-OFFICIAL BILLS

The Cochin Court Fees Act (Amendment) Bill

Khan Sahib Ismail Hajee Issa Sait *(Mattancheri):* Mr. President, Sir, I move that the Cochin Court Fees Act Amendment Bill be taken into consideration.

This amendment seeks a change which is very necessary for the country and the administration of Justice. The law should not be different from what is in the neighbouring Province of Madras. The Law should be brought on a par with what is prevalent in Britsh India. If the law comes into force, it is good for the landlord and the tenant. I do hope no more words are required for its acceptance.

Mr. C. V. Iyyu *(Kunnamkulam):* I second it.

Clause 2 put and carried

Clause 3

Mr. M. Sivarama Menon *(Advocate-General):* I beg to move an amendment. I beg to move that for clause 3 of the Bill the following shall be substituted.

"3. For the proviso to section 4 (*v*) (*b*) of the Cochin Court Fees Act II of 1080, the following shall be substituted "Provided that in suits for the recovery of land, house or garden based on a lease or a kanam, Adima or Anubhogam demise or any other demise of a cognate, nature the value shall be deemed to be the annual rent."

The purpose of this amendment is only to include specifically kanom, adima and other cognate tenures within the clause. As early as in the year 1082 the Chief Court has pointed out that this proviso requires an amendment so as to include kanam within its scope. For certain purposes, kanam is treated as a mortgage and for certain purposes kanam is treated as a lease. This amendment is intended to clarify the position.

Khan Sahib Ismail Hajee Issa Sait *(Mattancheri):* I have no objection.

Clause 3 as amended put and carried

Title, preamble and clause 1 put and carried

Khan Sahib Ismail Hajee Issa Sait *(Mattancheri):* The Bill may be taken up and finally passed to-morrow.

Mr. C. V. Iyyu *(Kunnamkulam):* I second it.

Motion put and carried

The Dissolution of Muslim Marriage Bill

***Mr. K. M. Ibrahim** *(Cranganur):* Mr. President, I beg to present the Select Committee report on the Cochin Dissolution of Muslim Marriage Bill and move that the Bill may be considered by the House. The Select Committee appointed to consider this Bill has thoroughly examined the Bill and the Bill is just a copy of the British Indian Muslim Law on the point. Hence I request the House will be pleased to give an easy passage to this piece of legislation.

Mr. V. K. Kutty *(Nominated):* I second it.

Motion put and carried

Mr. K. Narayana Menon *(Mulakunnathukavu):* I have withdrawn all the amendments.

Clauses 2 to 6 put and carried

Clause 1 put and carried

Title and preamble put and carried

---

*Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. K. M. Ibrahim *(Cranganur):* I beg to move that the Bill may be taken up and finally passed to-morrow.

Mr. V. K. Kutty *(Nominated):* I second it.

Motion put and carried

The Cochin Specific Relief Act (Amendment) Bill

* **Mr. K. Narayana Menon** *(Mulakunnathukavu):* I beg leave to present the Select Committee Report on the Cochin Specific Relief Act (Amendment) Bill and move that the Bill may be kindly taken into consideration. At the hands of the Select Committee the Bill has not undergone any serious change except that a right of appeal which was in the original Act was thought to be unnesessary since or orders are issued under the section by the Hon'ble the High Court and further appeal was thought not wise or necessary. The other amendment which was sought was to add a few more to the exceptions exercising the jurisdiction of the High Court. The other amendment that is sought is not anything which can be made in this Act without relation to the covenants of His Highness the Maharaja in relation to the Government of Cochin. That of course is something which has to be done in the Government of Cochin and the Select Committee has submitted that opinion of theirs in paragraph 3. There is no substantive or substantial amendment and I submit that the Bill as modified by the Select Committee may be kindly taken into consideration.

Mr. M. Sivarama Menon *(Advocate-General):* I oppose the motion for consideration of the Bill by this House as reported upon by the Select Committee. In doing so, I only wish to invite the attention of the House to the various objections raised by the Government on the floor of the House at the time of the introduction of this Bill. The first objection to the Bill is that the High Courts of Bombay, Calcutta and Madras which possess this power are courts with original Civil jurisdiction. The High Court of Cochin is not a court of original Civil jurisdiction. No analogy can therefore be rested on the ground that the High Courts of Madras, Bombay and Calcutta are exercising these powers under the specific Relief Act. The other High Courts in British India do not enjoy this power. The letters patent granted to the High Courts of Madras, Bombay and Calcutta expressly preserve the power to issue writs of mandamus. It was pointed out that anything that has not been reserved by His Highness the Maharaja should be taken to have been offered on the High Court in the matter of judicial administration. In the matter of interpretation of treaties, you will find the general rule to be that whenever a sovereign does not part with his fundamental rights, they are presumed to be in specific terms, reserved with the sovereign. No specific powers to issue writs of mandamus have been conferred on the High Court of Cochin. It cannot therefore be said that the power has been conferred. No such power has been conferred on the High Courts situated in Indian states. I pointed out that in Hyderabad, Travancore and Mysore these provisions are deleted in the Specific Relief Act. When this Government framed the Cochin Specific Relief Act the question was specifically considered and it was resolved to delete the Chapter. I need not recapitulate all the points threshed out on the previous occasion since both sides of the House have already formed definit views on this Bill. I oppose the motion.

***Mr. A. B. Salem** *(Mattancheri):* I rise to support the Bill. I am surprised that the learned Advocate-General has thought it fit to say that this Bill should be opposed or advised the Government that this Bill should be opposed. The judiciary is the strength of the democracy and the judiciary ought to possess all powers known to the law. I cannot understand the attitude of the Government to say that they will not prove that implicit trust in the judiciary which ought to be placed on them. The absoulte exercise of powers is not to be authorised in the State. I cannot understand why officers of Government should not support the idea of putting their actions sometimes to the examination and consideration of the judiciary, who would always be dignified and calm. It is not only public officers of Govenment that would come under mandamus order. There are many corporations and companies formed in the State to whom also such mandatory orders sometimes become necessary to be issued. What about them? I challenge the Hon'ble the Advocate-General to see if there have been any jundicial powers reserved by the Soveriegn Maharaja here which has not been given out to the Courts. I shall go seriatum with his statement. The High Court of Cochin has only original jurisdiction. I dispute that statement according to my knowledge the High Court was the very first Court established in the land called the Valia Court. If there was a case, the suit had to be filed in

* Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly